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SUPREME COURT OF THE UNITED STATES

**OCTOBER TERM, 1952**

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# No. 149

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LESLIE W. MILLS,

*Petitioner,*

*vs.*

THE UNITED STATES OF AMERICA

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**PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT AND BRIEF IN SUPPORT THEREOF.**

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CHARLES E. FORD,
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*Counsel for Petitioner.*

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SUPREME COURT OF THE UNITED STATES

**OCTOBER TERM, 1952**

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# No. 149

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LESLIE W. MILLS,

*Petitioner,*

*vs.*

THE UNITED STATES OF AMERICA

*Respondent*

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**PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT AND BRIEF IN SUPPORT OF PETITION.**

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*To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:*

Your petitioner, Leslie W. Mills, in support of his Petition for a Writ of Certiorari to review the final judgment of the United States Court of Appeals for the District of Columbia Circuit, entered April 24, 1952, affirming his conviction on both counts of a two count Indictment charging the petitioner in the first count with operating a lottery, in the second count charging him with the possession of numbers slips, respectfully shows:

## A

### Summary Statement of the Matter Involved

This proceeding was initiated by an indictment in the United States District Court for the District of Columbia

(R. 1). The indictment charged in the first count that the petitioner operated a lottery. In the second count the petitioner was charged with the possession of numbers slips. The petitioner elected to stand trial before the Judge without a Jury and through his attorney advised the Court at the beginning of the Trial that he would stand upon his Motion to Suppress the Evidence taken from him at the time of his arrest.

Thereafter, the Court denied the Motion to Suppress and found the petitioner guilty on both counts of the Indictment (R. 7).

Thereafter, on May 25, 1951, petitioner was sentenced to be imprisoned for a term of no less than four months and not more than one year and a day.

## Factual Situation Statement of the Case

In support of the charges alleged in the Indictment, the Government offered only one witness who testified that he had information that a 1939 Buick bearing certain Maryland tags was picking up numbers in a certain neighborhood. Pursuant to this information, the witness testified that on November 1, 1950 he observed the petitioner park his automobile, which was a 1940 Buick, get out and go into an apartment house where he stayed about 10 minutes. Upon leaving that apartment house the petitioner proceeded to another apartment house one block away which he entered. The petitioner remained there from 6 to 8 minutes, came out, got into his automobile and drove off. The witness testified that he did not observe the petitioner do anything other than this on the occasion mentioned. He further testified that on November 2, 1950 he saw the petitioner in the same neighborhood on foot and saw the pe-

titioner enter the same two apartments which he had entered on November 1, 1950. On this date, the witness said that when the petitioner left one of the apartment houses, he had a brown envelope sticking out of his coat pocket about 4 inches wide, and it was protruding about 2½ inches. The witness testified he had not seen the brown envelope when the petitioner entered the apartment house, and he testified further, that he was approximately 100 to 125 feet away from the petitioner when he saw the envelope. The witness testified that on 3 other occasions he saw the petitioner enter the same apartment houses, remaining a few minutes and then departing; that on 2 of these occasions he did not observe the petitioner do anything other than enter and leave but that on one of these 3 occasions he saw the petitioner in the act of putting money into his pockets. He testified that it was bills but that he had no idea of the number.

The witness further testified that the last day of observation was November 7, 1950 and that this was not either the occasion the petitioner was seen to put money into his pocket or was it the occasion when the brown envelope was seen protruding from the petitioner's pocket. The witnss testified that after the petitioner had come out of the second apartment house and had gotten into his automobile that he and another police officer parked their car directly behind the petitioner's car and got out. The witness testified that he went to one side of the petitioner's car and the other officer went to the opposite side. The petitioner, he testified, was sitting behind the steering wheel and that there was a brown paper bag about the size of a lunch bag laying on the front seat on the right side of the driver. The bag was closed, and there were no markings on it. The witness testified he asked the petitioner:

" 'What have you got in the bag?' Wel, he didn't make any comment. He just sort of grinned, nd I said, 'Well, hand me the bag.' He handed me the ba; and it contained numbers slips and some money." (R. 5).

The witness testified that in his opin on he placed the defendant under arrest after he saw the numbers slips in the bag. The witness testified concernin the information received by him prior to his observation as follows: "The information I had was that a 1939 Buic bearing certain Maryland tags operated by a white ma was picking up numbers in that vicinity." Q. "And th t same tag number was on this car?" A. "There was slight variation, sir, between the information I had and th e actual tag number of this defendant's car. The first th ee numbers were the same. The last two numbers were ifferent" (R. 5).

The witness testified that he did not s any of the days he watched the petitioner see him have an contact with any person or did he follow the petitioner int any of the places which the petitioner entered, and that e did not have a warrant and had not made any applicati n for one for the arrest of the petitioner (R. 6-7).

B

**Statement of the Jurisdiction of This Court**

1. STATUTORY PROVISION BELIEVED TO S USTAIN THE JURISDICTION. The jurisdiction of this Court is invoked under Section 1254 of Title 28 of the U. S. Co .

C

**The Question Presente**

Whether the Court erred in not grant g the petitioner's Motion to Suppress the evidence taken om the petitioner

at the time of his arrest without a warrant when the evidence showed that the only basis for the arrest was that the police having received information that a man was picking up numbers in a certain locality observed the petitioner following practically the same route on several different occasions without their seeing him have any contact or transaction with any other person and seeing on one occasion an envelope protruding about two inches from his pocket when he came out of a building and on another one of the aforementioned occasions seeing him put money in his pocket as he left a building.

## D

### Reasons Relied on for the Allowance of the Writ

1. The decision of the Court below is not in harmony with the following decisions of this Court: *Trupiano* v. *U. S.*, 334 U. S. 699; *McDonald* v. *U. S.*, 335 U. S. 451; *Robert J. Judd* v. *U. S.*, decided in this Court on May 19, 1951 and *U. S.* v. *Jesse W. Jeffers, Jr.*, decided in this Court on November 13, 1951.

2. The Court below relied on *Brinegar* v. *U. S.*, 338 U. S. 160 as governing the situation in this case but the *Brinegar* case differed in the following eleven respects with the facts in the instant case:

1. Agent had arrested same defendant 5 months before for same offense.
2. Had seen defendant on at least two occasions during the previous 6 months loading liquor into a car, in Missouri, in large quantities.
3. Knew defendant had a *reputation* for hauling liquor.
4. Agent recognized both defendant and the Ford as he went by.
5. The car appeared to agent to be "heavily loaded" and "weighted with something".

6. Defendant increased his speed as he went by and agents chased him for a mile at top speed, his car skidded on curve, they had to crowd his car to the side of the road.

7. The road was one leading from Joplin, Missouri to Vinita, Oklahoma, home of defendant as agent knew.

8. Defendant when questioned admitted he had liquor in car.

9. One case of liquor was visible from outside—on front seat.

10. Car was moving.

11. Agent had personal knowledge and not merely hearsay.

3. The Trial Court misquoted the testimony when it said "In this case the defendant was seen making rounds, so to speak, of the same apartment houses on several occasions, and on several of those occasions he came out carrying a bag, or an envelope which he did not have when he entered" (R. 7).

The testimony of the arresting officer clearly shows that on no occasion did the petitioner come out carrying a bag and that on one occasion only he had an envelope protruding from his pocket about two and one-half inches.

The Court of Appeals in its opinion stated "leaving one of the buildings he had in his pocket a brown paper bag which was not there when he entered" (R. 10). Again, this was a misquoting of the testimony. This may not seem important at first glance but when we consider that there was a bag in the front seat of the car at the time the petitioner was arrested and that it was in this bag that the incriminating evidence was found, it does bolster the position of the Government that the officer did have reasonable cause to believe that a Felony was being committed in his presence. The reported testimony of the arresting officer clearly shows that the first and only time that the brown paper bag was seen by the officers was on the occasion of

the petitioner's arrest when he saw the bag on the front seat of the petitioner's car.

## Conclusion

The question presented is of grave public importance. Unless the ruling below is reviewed, the law relating to the questions presented will be left in confusion.

WHEREFORE, your petitioner prays that a Writ of Certiorari issue under the seal of this Court, directed to the United States Court of Appeals for the District of Columbia Circuit, commanding said Court to certify and send to this Court a full and complete transcript of the record and of the proceedings of the said United States Court of Appeals in the case numbered and entitled on its docket No. 11,046, Leslie W. Mills, Appellant *vs.* United States of America, Appellee; to the end that this cause may be reviewed by this Court, as provided for by the statutes of the United States of America; and that the judgment of the said Court of Appeals be reversed by this Court; and for such further relief as to this Court may seem proper.

Dated: June 23rd, 1952.

CHARLES E. FORD,
H. CLIFFORD ALLDER,
*Counsel for Petitioner.*

SUPREME COURT OF THE UNITED STATES

**OCTOBER TERM, 1952**

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# No. 149

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LESLIE W. MILLS,

*vs.* *Petitioner,*

THE UNITED STATES OF AMERICA,

*Respondent*

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## BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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### Opinions of Courts Below

The opinion of the United States Court of Appeals for the District of Columbia Circuit has not yet been reported, but appears at R. 9.

The trial Court issued no formal opinion but did make a comment as shown at R. 7.

### Jurisdiction

1. The date of the Judgment to be reviewed is April 24, 1952.

2. The statutory provision which is believed to sustain the jurisdiction of this Court is Title 28, Section 1254, U. S. Code.

**Statement of the Case**

This has already been stated in the preceding Petition and is hereby adopted and made a part of this brief in the interest of brevity.

**Specification of Errors**

Errors urged and the question presented are contained in the Petition for Writ of Certiorari (supra).

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The summary of Arguments will follow the order set forth in the Petition.

**Question**

Whether the Court erred in not granting the petitioner's Motion to Suppress the evidence taken from the petitioner at the time of his arrest without a warrant when the evidence showed that the only basis for the arrest was that the police having received information that a man was picking up numbers in a certain locality observed the petitioner following practically the same route on several different occasions without their seeing him have any contact or transaction with any other person and seeing on one occasion an envelope protruding about two inches from his pocket when he came out of a building and on another one of the aforementioned occasions seeing him put money in his pocket as he left a building.

**Summary of Argument**

a. The former decisions of this Court.

b. The Court below relied on the case of *Brinegar* v. *U. S.*, 338 U. S. 160 but the facts there differ greatly from the facts of this case.

c. The Trial Court and the Court of Appeals misquoted the testimony of the arresting officer and in so doing greatly strengthened the position of the Government.

**Argument on Question**

The officer testified that he had information that "a 1939 Buick bearing certain Maryland tags operated by a white man was picking up numbers in that vicinity." (R. 5).

The same officer said the tag number of the petitioner's car bore the same first three numbers but the last two were different from his information and that the car of the petitioner was a 1940 Buick and not a 1939 model. This information was certainly not enough to justify the arrest and search of the petitioner. *Schencks* v. *U. S.*, 55 Appeals D. C. 84.

The witness then testified that he observed the petitioner on five days enter the same two apartment houses. This in itself did not justify his arrest and search and when coupled with the officer's information, did not justify it.

On one of the five observations, the petitioner, on leaving an apartment house, was seen to have an envelope protruding about two inches from his pocket. This observation was made from a distance of 100 to 125 feet away. The officer said he had not seen the envelope when the petitioner entered the building. It would not be urged, we are sure, by anyone that this justified the search. This fact added to the officers' information, could not make the search a legal one.

On another of the five observations the petitioner was seen with some bills in his hand as he left an apartment house. Was this a Crime? Of course not, and when added to the previous facts, could not justify the arrest and search. *Bolt* v. *U. S.*, 55 D. C. Appeals, 120.

On the fifth observation, which was not the day of the

envelope testimony or the day the officer said he saw some bills in the hand of the petitioner, the officer said, "And he started to get into his car.

I was driving the car and I pulled up and parked directly behind him and Tayman got out, and of course I got out and went to one side of his car and as I did the defendant was then seated in his car. On the seat beside him was a brown paper bag about the size of a lunch bag, possibly 12 inches tall.

Q. Did the bag appear to have anything in it, sir?

A. Yes, it did.

Q. What, if anything, did you do then, sir?

A. I said to the defendant: "What have you got in the bag?" Well, he didn't make any comment. He just sort of grinned, and I said, "Well, hand me the bag." He handed me the bag and it contained numbers slips and some money.

Q. Did you place the defendant under arrest?

A. Yes, sir.

Q. When did you place him under arrest?

A. As soon as I saw those numbers slips (R. 5)."

The seeing of the bag on the seat of the car without seeing it placed there, or any activity connected with it certainly did not justify the arrest and search of the petitioner and the statement of the officer that he did not arrest the petitioner until he had seen what was in the bag is obviously not a fact. When he questioned the petitioner and said "Well, hand me the bag." (R. 5) the petitioner was without question under arrest and what was found afterwards in the bag could not justify the prior arrest. *Robert J. Judd* v. *U. S.*, decided by the U. S. Court of Appeals May 19, 1951. Counsel for the Government conceded this to be true —see statement of Court (R. 11).

No one of the facts or observations in this case by and of itself would give the officer reasonable grounds to believe

that a felony had been committed by the petitioner and, therefore, justify his arrest without a warrant and when taken all together the best the officer had was suspicion and his purpose as stated in the Case of *U. S.* v. *John V. Taylor,* 286 U. S. 1-6, was to secure evidence to support the arrest.

We submit the officer should have applied for a warrant where the meager and incorrect information given to the officer could have been tested by a judicial officer. *Earl McDonald* v. *U. S.,* 333 U. S. 872.

The officer at no time saw the petitioner contact any person in any manner whatsoever.

It might be argued that this case is one that should be left to the sound discretion of the trial judge as to whether reasonable grounds existed but how can we, when the Judge in giving his decision gives a recital of facts which do not exist in the testimony: "In this case the defendant was seen making rounds, so to speak, of the same apartment houses on several occasions, and on *several* of those occasions he came out *carrying* a bag, or an envelope which he did not have when he entered.

Coupled with that is the fact that he was seen *counting* money after coming out of one of the buildings. Finally, when the officer asked him what was in the bag, that was before the arrest and the bag was alongside of him on the seat in the car, he failed to answer the question. I think the officer had a right to infer that the answer would have been unfavorable if made" (R. 7).

The fact that the petitioner was in an automobile did not, as in prohibition days, make it impractical to apply for a warrant because the petitioner would disappear. The evidence showed that the police observed the petitioner five times and had his tag number, and had seen the envelope on the second day and the bills on the third day. How could it be said they did not have time to apply for a warrant?

It might be said that the Fourth and Fifth Amendments

increase the difficulties in suppressing crime. But that is just what the framers of the Bill of Rights intended. Without the Constitution it would be much easier for the police to catch criminals. But the Founding Fathers, and the members of the First Congress, among whom there were many of the Founding Fathers, were apparently willing to sacrifice some efficiency in law enforcement in order to give us the protection of the Bill of Rights for which our Constitution is justly famous. We, therefore, submit that this was an illegal arrest and seizure.

## Conclusion

The petition to this Court urging it to exercise its power to supervise the proceedings in the courts below; to decide the important questions of Federal and general law which has not been but should be decided by this Court to clarify the conflicting opinions concerning certain questions reached as existing in different circuits is thought to present a matter deserving the attention of this Court, to the end that the existing complexities and conflicts may be resolved and an authoritative rule be made available for the guidance of the lower courts; and the existing doubts, confusions, and uncertainties dispelled.

Respectfully submitted,

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## CITATIONS


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# In the Supreme Court of the United States

OCTOBER TERM, 1952

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No. 149

LESLIE W. MILLS, PETITIONER

*v.*

UNITED STATES OF AMERICA

---

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT*

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## BRIEF FOR THE UNITED STATES IN OPPOSITION

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### OPINION BELOW

The opinion of the Court of Appeals (R. 9-13) is not yet reported.

### JURISDICTION

The judgment of the Court of Appeals was entered on April 24, 1952 (R. 14). An order of May 23, 1952, by the Chief Justice extended the time for filing a petition for certiorari to June 23, 1952 (R.

16), and the petition was filed on that date. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1). See also Rules 37(b)(2) and 45(a), F. R. Crim. P.

#### QUESTION PRESENTED

Whether the circumstances surrounding the surveillance of petitioner, who had been suspected of violating the numbers game statutes, were sufficient to give police officers probable cause to arrest him and, as an incident thereto, to search without a warrant a paper bag on the front seat of his automobile, and to seize numbers slips and money contained in the bag.

#### STATUTES INVOLVED

22 D. C. Code [1940 ed.] provides:

> § 1501: If any person shall within the District keep, set up, or promote, or be concerned as owner, agent, or clerk, or in any other manner, in managing, carrying on, promoting, or advertising, directly or indirectly, any policy lottery, policy shop, or any lottery, * * * he shall be fined upon conviction of each said offense not more than $1,000 or be imprisoned not more than three years, or both. * * *
>
> § 1502: If any person shall within the District have in his possession, knowingly, any ticket, certificate, bill, slip, token, paper, writing, or other device used, or to be used, or adapted, devised, or designed for the purpose of playing, carrying on, or conducting any lottery, or the game or device commonly known as policy lottery or policy, he shall be fined

upon conviction of each said offense not more than $500 or be imprisoned for not more than six months, or both.

## STATEMENT

In a two-count indictment in the United States District Court for the District of Columbia, petitioner was charged with carrying on a lottery known as the numbers game in violation of 22 D. C. Code § 1501, and with knowingly having in his possession certain slips used in the numbers game in violation of 22 D. C. Code § 1502 (R. 1). During his trial before the judge without a jury, petitioner renewed a prior motion to suppress the evidence seized at the time of his arrest (R. 7). After the motion was denied, petitioner offered no evidence (R. 11). He was convicted under both counts of the indictment (R. 9). On appeal, the Court of Appeals affirmed the judgment (R. 14).

The evidence adduced to sustain petitioner's conviction may be summarized in pertinent part as follows:

Officers of the Metropolitan Police Department of the District of Columbia obtained anonymous information that a 1939 Buick, bearing Maryland tags and operated by a white man, was "picking up numbers" in the vicinity of the 1100 block of Columbia Road Northwest. There was a slight variation between the information and petitioner's license number, the first three numbers being the same while the last two were different. Although officer Molle thought that the car was a 1939 Buick,

petitioner's registration card showed that it was a 1940 model. (R. 5-6.)

Acting upon this information, officer Molle on November 1, 1950, observed the petitioner park his automobile, enter an apartment in the 1000 block of Columbia Road Northwest, remain there about 10 minutes, walk to another apartment in the 1100 block, remain there about 6 or 8 minutes, and then drive off in his automobile (R. 2-3).

On November 2, after Molle saw petitioner enter and leave the two apartments again, the officers followed him in his car, but lost him in the traffic. On this occasion, when petitioner left the apartment in the 1100 block of Columbia Road, Molle saw that he had in his right-hand coat pocket a brown envelope about 4½" wide at the top and protruding about 2½", which Molle had not observed when petitioner entered. (R. 3-4, 6.)

On three other occasions, Molle watched petitioner in the same vicinity go through the procedure of entering the two apartments, remaining there a few minutes, and then departing. On one occasion, he saw petitioner putting money in the form of bills into his pockets. (R. 4.)

On November 7, the officers followed petitioner to the 3500 block of 13th Street, Northwest, and as he started to get into his car, Molle and another officer approached him. Molle saw on the seat beside the petitioner a brown paper bag about 12 inches high, which apparently had something in it. When Molle asked petitioner, "What have you got in the bag?", petitioner made no comment, but

just "grinned." Molle then directed, "Well, hand me the bag." Petitioner did so. The bag contained "numbers slips and some money," which the officers seized and which were used as evidence at the trial. Molle testified that he arrested petitioner as soon as he saw the numbers slips. (R. 4-5.) The officers did not have a warrant for petitioner's arrest (R. 7).

The trial court, in overruling petitioner's motion to suppress the evidence seized, was of the opinion that all of the facts surrounding petitioner's surveillance were sufficient to constitute probable cause for the arrest on a felony charge. In his ruling he stated (R. 7): "I do not think there was any obligation on the part of the officers to go out and get a warrant, because the law recognizes the right of law enforcement officers to make an arrest on a felony charge without a warrant, on probable cause."

## ARGUMENT

The opinion of the court below was predicated upon well-established legal principles. Its holding that the police officers had probable cause to justify petitioner's arrest, and that the search and seizure were reasonable and valid as proper incidents thereto, should not be disturbed.

The principles stated in *Brinegar* v. *United States*, 338 U.S. 160, which relied upon the earlier case of *Carroll* v. *United States*, 267 U.S. 132, as an applicable parallel, are controlling. Under *Brinegar* probable cause for an arrest or search

of a moving vehicle without a warrant is a matter of "probabilities", and requires a much lesser degree of proof than that necessary for a criminal conviction. "Probable cause exists where 'the facts and circumstances within their [the officers'] knowledge and of which they had reasonably trustworthy information [are] sufficient in themselves to warrant a man of reasonable caution in the belief that' an offense has been or is being committed. *Carroll* v. *United States,* 267 U.S. 132, 162" (338 U.S. at 175-176). The rule makes allowances for possible errors by officers, but "the mistakes must be those of reasonable men, acting on facts leading sensibly to their conclusions of probability" (338 U.S. at 176).

In the instant case the arresting officers had been told by an anonymous informant that a white man using a 1939 Buick automobile [1] with Maryland license tags had been "picking up numbers" by making collections in a designated neighborhood. The first three numbers on petitioner's license tag were the same as those furnished by the informant, but the last two were different, so the officers cautiously decided not to arrest petitioner the first time they saw him. Further observation of petitioner on four other occasions showed a course of conduct consistent with the periodic collection of money at the same places by

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[1] The fact that the car later turned out to be a 1940 Buick was unimportant, since there was little difference in the appearance of the two models.

petitioner as a "pickup" man.[2] The police saw petitioner enter one of the apartments without an envelope, and leave with a large brown envelope[3] protruding from his coat pocket. They observed him counting currency while leaving one of the apartments. Finally, at the time of the arrest in his automobile, petitioner's peculiar conduct in merely grinning and remaining reticent when asked what was in the bag, instead of offering an explanation, was further evidence of reasonable grounds for the police to believe that he was probably engaged in picking up numbers bets at the time of his arrest. The foregoing combination of circumstances, the court below correctly held, was sufficient to establish probable cause for the belief that petitioner was then engaged in the numbers business. The search was therefore justified, both

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[2] Although it was possible that petitioner might have been engaged in some legal business in periodically entering the apartments, the *Brinegar* case, *supra*, makes allowances for honest mistakes by officers. To make a valid arrest without a warrant, it was necessary only that the officers had probable cause for believing that petitioner was engaged in the illegal pursuit of "picking up numbers."

[3] The Court of Appeals, in mentioning this incident, erroneously referred to a "brown paper bag" instead of the envelope (R. 10). The trial court also inadvertently misquoted evidence in stating that on several occasions petitioner "came out carrying a bag, or an envelope which he did not have when he entered" (R. 7). The testimony did not specifically show that petitioner was seen carrying a bag (although he had one on the seat of his automobile when arrested), and disclosed that on only one occasion did he have an envelope protruding from his pocket. Petitioner attempts to make much of these discrepancies (Pet. 6-7), but they were extremely minor and certainly did not substantially affect the ultimate rulings of either the Court of Appeals or the trial court.

as incident to the arrest, upon the assumption that, as contended by petitioner (Pet. 12), the arrest technically took place at the time the officer demanded the paper bag (R. 11), and as a search of a moving vehicle which the officers reasonably believed was being used in violating the law.

## CONCLUSION

The case involves no conflict calling for review. It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

PHILIP B. PERLMAN,
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BEATRICE ROSENBERG,
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JULY 1952.

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